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IN THE  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 1978

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**No. 78-255**

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In the matter of:  
PENN CENTRAL  
TRANSPORTATION COMPANY,  
Debtor.

THE PITTSBURGH, YOUNGSTOWN &  
ASHTABULA RAILWAY COMPANY,  
Secondary Debtor.

SUTHERLAND MARINE COMPANY,  
Petitioner.

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**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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JOSEPH S. GILL  
100 East Broad Street  
Columbus, Ohio 43215  
(614) 227-2357  
*Attorney for Petitioner*  
Sutherland Marine Company



**IN THE  
SUPREME COURT OF THE UNITED STATES**

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Secondary Debtor.

SUTHERLAND MARINE COMPANY,  
Petitioner.

**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above case on June 21, 1978.

**OPINIONS BELOW**

The United States District Court for the Eastern District of Pennsylvania did not issue an opinion in deciding this matter. It appears that that court must

have relied on its previous opinion in the matter of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, THE CLEVELAND & PITTSBURGH RAILROAD COMPANY, Secondary Debtor, dated October 13, 1976. A copy of said opinion is appended to this petition at p. 7.

No opinion was rendered by the Court of Appeals for the Third Circuit.

### JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on June 21, 1978. Petitioner's application for rehearing in banc was denied on July 11, 1978. Copies of said orders are appended to this petition at pp. 10-12.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The questions presented are:

### QUESTIONS PRESENTED

1. Is a trustee in bankruptcy who conducts a private sale of property from the bankrupt estate, and who receives a confirmed offer substantially in excess of the appraised value of the property, under a duty to recommend the sale to the bankruptcy court, when he, the trustee, has no other similar offer before him.
2. Is a District Court, sitting in bankruptcy, required to provide a hearing to a competing, earlier bidder who requests such a hearing, when the court is considering a petition to sell property to a later bidder.
3. Have the trustee in bankruptcy and the lower courts in this case acted in the best interests of the bankrupt estate.

### STATEMENT OF THE CASE

Jurisdiction in the court of first instance — the District Court for the Eastern District of Pennsylvania — was from Section 77 of the Bankruptcy Act, 11 U.S.C. §205.

This matter began with the petition of the Trustees in Bankruptcy of the Penn Central Transportation Company for authority to sell a parcel of land to a combination of two bidders. A competing, earlier bidder — the petitioner — objected to the petition and filed an answer requesting a hearing. The district court, without the requested hearing, granted the petition and approved the sale as requested in the petition. The basic facts leading up to the Trustees' petition are as follows:

1. The property in question was appraised on August 28, 1975 at \$349,300.00. This appraisal was revised on August 17, 1976 to \$354,740.00.
2. During the period September 4, 1974 to July 8, 1976, three prospective purchasers were dicker-ing with the trustees to buy portions of the property at private sale:
  - a. Ashtabula Yacht Club indicated an interest in buying approximately 10.6 acres which it leases.
  - b. Kister Construction Company indicated an interest in buying the remainder of the property not sold to Ashtabula Yacht Club.
  - c. Sutherland Marine Co. — the petitioner — indicated an interest in buying approximately 5.5 acres which it leases.
3. On July 8, 1976 Sutherland made a firm offer of \$454,000.00 cash for all of the property.

4. Instead of forwarding this offer to the district court for approval, the trustees set up a purported bidding procedure as follows:

Ashtabula Yacht Club and Kister were notified that they could now submit a joint bid. The parties were notified that sealed bids for the property would be received until August 31, 1976. Sutherland was told that the joint bid would be opened first, and if it did not exceed \$454,000.00 Sutherland would get the property at that figure. If the joint bid exceeded \$454,000.00 Sutherland's bid would then be opened.

5. Sutherland did not submit a further bid.
6. The joint bid was \$465,500.00 which the trustees accepted. The lower court approved this bid without having a hearing on the adequacy of the earlier Sutherland bid, even though Sutherland requested such a hearing. The Court of Appeals for the Third Circuit affirmed the action of the district court without oral argument and without rendering an opinion.

#### REASONS FOR GRANTING THE WRIT

The decision below should be reviewed primarily because of the case from which it arises. Financially, the aggregate sales of property from the Penn Central estate will constitute the largest amount ever involved in a bankruptcy proceeding. It is imperative that the procedures adopted by the trustees and supervised by the district court be strictly according to precedent in bankruptcy cases, and have both the appearance and substance of being above reproach. It is submitted that no fair-minded person could read the limited

record in this case without concluding that for some reason Kister and Ashtabula Yacht Club were favored over Sutherland.

If the reputation of the Trustees becomes that certain insiders are favored in sales of property from the estate, while bona fide offers are given short shrift, the estate will suffer. This Court stated the American rule early on, in the case of *Graffam v. Burgess*, (1886) 117 U. S. 180, at p. 191, that such a procedure tends to diminish confidence in judicial sales, keeps bidders from participating, and diminishes the amounts realized from sales.

The necessity of reviewing the decision below becomes more important because the Third Circuit Court of Appeals, which has been a bell-weather in its protection of bidders at judicial sales, appears to have abandoned its traditional approach. That Circuit decided and has consistently followed the case of *In re. Stanley Engineering Corporation*, 164 F. 2d 316; certiorari denied under name of *Root v. Galman*, 332 U. S. 847. The *Stanley Engineering* case upheld the rights of a high bidder at a judicial sale even though subsequent higher bids were received by the district court at a confirmation hearing. The Third Circuit was followed by the Seventh Circuit in the case of *In re. Marathon Foundry & Machine Company*, 239 F. 2d 122; certiorari denied 353 U. S. 912; and by the Tenth Circuit in the case of *Smith v. Save-Rite Drug Stores*, 178 F. 2d 507.

It is the Third Circuit which supervises the district court and the trustees in their administration of the Penn Central estate. It is submitted that if that court is to abandon its traditional approach to sales from the estate, it should do so only after a full record has been



made and in the form of an opinion stating its reasons for doing so.

The petitioner is aware that in its present posture this case involves an inadequate record below; questions of fact; and a review of the discretion exercised by the trustees and the district court. All of those factors constitute hornbook reasons for this Court to refuse jurisdiction. It is submitted that certiorari should be issued here, if only for the purpose of remanding to the lower court with instructions to hold the hearing originally requested by the petitioner and to make a proper record.

Respectfully submitted,  
 JOSEPH S. GILL  
 100 East Broad Street  
 Columbus, Ohio 43215  
 (614) 227-2357  
*Attorney for Petitioner*  
 Sutherland Marine Company

**MEMORANDUM AND ORDER (10/13/76)**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT**  
**OF PENNSYLVANIA**

In the Matter of  
 PENN CENTRAL  
 TRANSPORTATION COMPANY,  
 Debtor

Bky. No. 70-347  
 Order No. 2594

THE CLEVELAND AND PITTSBURGH  
 RAILROAD COMPANY,  
 Secondary Debtor

In Proceedings for the Reorganization of a Railroad  
 Bky. No. 70-347-D

Order No. 81  
**MEMORANDUM AND ORDER**

FULLAM, J. October 13, 1976

The Trustees of the Penn Central and of the Cleveland and Pittsburgh Railroad Company have jointly petitioned for approval of a proposed sale of certain real estate in Cleveland, Ohio, to K & S Parking Company, Inc. (Document No. 11174, PCTC).

A portion of the property is leased to C-K Properties, Inc. for commercial parking facilities. Originally, the Trustees (through their representative, the Penn Central Properties Division of Victor Palmieri & Company, Incorporated,) negotiated a sale of the tract to C-K Properties, Inc. for \$273,000. Before this trans-

action had received the final approval of the Trustees (and, of course, before approval of this Court was sought), it was learned that K & S Parking Company, Inc. would be interested in paying a higher price for the property.

Thereupon, the Trustees' representatives invited both prospective purchasers to submit sealed bids. But in view of the previous negotiations with C-K Properties, it was announced that the K & S bid would be opened first; if that did not exceed the original offer of C-K, C-K's sealed bid might be withdrawn, and the property would be sold at the original price. If the K & S bid exceeded the original offer by C-K, C-K's sealed bid would be opened, and the property would be sold to the higher bidder. This procedure was carried out. The K & S bid of \$351,110 exceeded C-K's original offer by more than \$76,000, and exceeded C-K's sealed bid by approximately \$37,000.

At the hearing in this Court, C-K objected to the proposed sale, asserting that, at the time the sealed bids were opened, it became apparent that the amount of C-K's original offer for the property was known by K & S. The Palmieri official handling the transaction denied any knowledge of such a "leak," but conceded that disclosure of this information to K & S may well have occurred.

Significantly, there has never been any assertion that the sealed bid procedure itself was in any way tainted. That is, there is no assertion that either bidder had any knowledge as to the amount of the other's bid. I fail to see how disclosure of the amount of the earlier offer (which, needless to say, was well known to C-K itself), assuming it occurred, gave K & S any unfair advantage.

More importantly, however, there is no assertion that C-K would, even now, be willing to equal or exceed the K & S bid. All that has been asserted is that, if the present petition is not approved, C-K would obtain further appraisals of the property, and, depending upon what they showed, might be willing to offer more than K & S's bid.

The Trustees' appraiser values the property at \$273,000. He testified that, even with knowledge of the bids, he could see no justification for increasing his appraisal. The proposed sale to K & S would therefore seem to be in the best interests of the Debtor's estate. I am not persuaded that the amount allocated to land value in connection with K & S's financing of proposed development of the property can be regarded as an appraisal of the present market value of the property.

The Petition will be granted.

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

Nos. 77-2521 and 77-2522.

In the Matter of:

PENN CENTRAL  
TRANSPORTATION COMPANY,  
Debtor.

SUTHERLAND MARINE COMPANY,  
Appellant in No. 77-2521.

In the Matter of:

PENN CENTRAL  
TRANSPORTATION COMPANY,  
Debtor.

THE PITTSBURGH YOUNGSTOWN AND  
ASHTABULA RAILWAY COMPANY,  
Secondary Debtor.

SUTHERLAND MARINE COMPANY,  
Appellant in No. 77-2522.

(D.C. No. B-70-347 In Bankruptcy, E.D. of Pa.)

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Submitted Under Third Circuit Rule 12(6)  
June 19, 1978

BEFORE SEITZ, *Chief Judge*, ALDISERT and  
WEIS, *Circuit Judges*.

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JUDGMENT ORDER

After consideration of all contentions raised by  
appellants, it is

ADJUDGED AND ORDERED that the judgment  
of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

/s/ COLLINS J. SEITZ  
*Chief Judge*

Attest:

/s/ THOMAS F. QUINN  
*Clerk*

Dated: Jun 21 1978

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 77-2521/2

In the Matter of:

PENN CENTRAL  
TRANSPORTATION COMPANY,  
Debtor

SUTHERLAND MARINE COMPANY,  
Appellant

**SUR PETITION FOR REHEARING**

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS,  
GIBBONS, ROSENN, WEIS, GARTH and  
HIGGINBOTHAM, *Circuit Judges*.

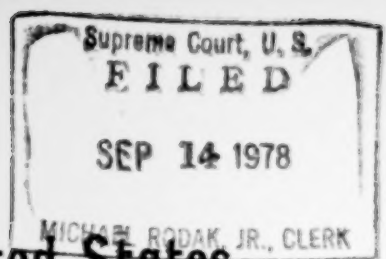
The petition for rehearing filed by  
Appellant

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,  
/s/ SEITZ  
*Chief Judge*

Dated: July 11, 1978





IN THE  
**Supreme Court of the United States**

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**No. 78-255**

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IN THE MATTER OF  
PENN CENTRAL TRANSPORTATION COMPANY,  
*Debtor*

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SUTHERLAND MARINE COMPANY,  
*Petitioner*

*v.*

TRUSTEES OF THE PROPERTY OF PENN CENTRAL  
TRANSPORTATION COMPANY

and

TRUSTEE OF THE PROPERTY OF THE PITTSBURGH,  
YOUNGSTOWN & ASHTABULA RAILWAY COMPANY,  
*Respondents*

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**BRIEF FOR RESPONDENTS IN OPPOSITION**

---

MARK WILLCOX, JR.  
HERBERT G. SCHICK  
HEPBURN, ROSS, WILLCOX  
& PUTNAM  
2010 Two Penn Center Plaza  
Philadelphia, Pa. 19102  
*Attorneys for Trustee of  
The Pittsburgh, Youngstown  
& Ashtabula Railway  
Company, Secondary Debtor*

CARL HELMETAG, JR.  
EUGENE E. ANDERSON, JR.  
3100 IVB Building  
1700 Market Street  
Philadelphia, Pa. 19103  
*Attorneys for Trustees of  
Penn Central Transportation  
Company, Debtor*

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## QUESTIONS PRESENTED

1. In a railroad reorganization, is an oral hearing necessary to dispose of a petition for the sale of assets where the issue is narrow, the relevant facts are set forth in written submissions to the Reorganization Court and no relevant material facts are disputed?

2. Was the Reorganization Court correct in approving a sale to the high bidder under a sealed bid procedure whereby two prospective purchasers—after one of them had made a formal offer for the property—were given an equal opportunity to bid and both were advised that the high bid received by a specified date would be recommended to the Trustees for acceptance?

### STATEMENT OF THE CASE

During the period 1974-76, the Trustees of Penn Central Transportation Company (Penn Central) negotiated with two parties for the sale of 78 acres of riverfront land in Ashtabula, Ohio. The property is owned by The Pittsburgh, Youngstown & Ashtabula Railroad Company, a leased line which is included in the Penn Central reorganization as a secondary debtor. The first party to approach the agent of the Trustees was the Ashtabula Yacht Club (Yacht Club), which in 1974 indicated an interest in purchasing the 10.6 acres which it leases. Upon being advised that the tract would not be subdivided for sale, the Yacht Club persuaded Kister Construction Company (Kister) to join it in negotiating for purchase of the entire tract. Meanwhile, in 1975, Sutherland Marine Company (Sutherland), petitioner herein, expressed a desire to purchase the 5.5 acres leased to it. Upon being advised that only the entire tract would be sold and that other parties were interested in buying the property, Sutherland submitted a written offer on July 8, 1976, to buy the property for \$454,000. The appraised value of the property was \$354,740.

It is clear from the language of the instrument signed by Sutherland that the Trustees were not bound either to accept the offer (although higher than the appraisal) or to submit it to the Reorganization Court for approval. Section 8.2 of the instrument reads as follows:

*"8.2 Binding Offer.* In consideration of the payment by Seller to Buyer of Ten Dollars (\$10.00) and for other valuable consideration, receipt of which is hereby acknowledged by Buyer, Buyer agrees that its execution of this agreement and the delivery of same to Seller constitutes a binding and irrevocable

offer by Buyer to purchase the Land on the terms and conditions herein contained and that, except as otherwise expressly provided herein, such offer shall remain binding on Buyer and subject to acceptance by Seller until one hundred twenty (120) days after Buyer's Delivery Date [August 31, 1976], or until Buyer notifies Seller that such offer has been revoked, whichever occurs later. Buyer understands and agrees further that, notwithstanding any action or performance heretofore or hereafter taken or rendered by Seller or any agent or employee of Seller arising out of or in connection with this agreement, Seller shall not be deemed to have accepted such offer, nor shall Seller have any liability whatsoever to Buyer with respect to the Land or arising hereunder, unless or until Seller executes this agreement and delivers the same to Buyer. Buyer understands further: that Seller will not execute or deliver this agreement unless the Court has issued an order, which Seller deems to have become final, approving the transactions contemplated by this agreement . . ."

Since there were two parties desiring to purchase the same property, the agent of the Trustees notified both parties that sealed bids for the property would be accepted until 12:00 noon on August 31, 1976. The Yacht Club and Kister were furnished the same form of agreement as that signed by Sutherland, and the parties were advised that the following procedure would govern in the opening of the bids: the Yacht Club-Kister joint bid would be opened first, and, if it were found to be lower than Sutherland's original offer, Sutherland's bid would remain sealed and its original offer would be recommended for acceptance by the Trustees; if the Yacht Club-Kister bid were higher than Sutherland's original offer, Sutherland's bid would be



opened and the higher of the two bids would be recommended for acceptance. Sutherland stood on its original offer of \$454,000. Yacht Club-Kister submitted a bid of \$465,500. The agent of the Trustees recommended that the Yacht Club-Kister bid be accepted, and so advised both bidders.

The Trustees accepted the high bid and petitioned the Reorganization Court under Section 77(o) of the Bankruptcy Act, 11 U.S.C. § 205(o), for approval of the sale. The Reorganization Court authorized the sale on the basis of the pleadings<sup>1</sup> without issuing an opinion. Sutherland appealed to the United States Court of Appeals for the Third Circuit, which dispensed with oral argument and unanimously affirmed the Reorganization Court's order. Sutherland then filed a petition for rehearing in banc, which was denied. After securing a stay of the mandate of the United States Court of Appeals, Sutherland has filed a petition for a writ of certiorari urging this Court to review the decisions of the courts below.

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1. The circumstances of the sale, including the sealed bid procedure, were fully explained in the Trustees' petition for approval of the sale. Sutherland filed an answer contending that there should have been no bidding and that its offer should have been submitted to the Reorganization Court regardless of pending negotiations with Yacht Club-Kister. The Trustees then called the Court's attention to an earlier sale where similar objections to the use of the sealed bid procedure had been raised and where the Court had issued an opinion approving the sealed bid procedure and overruling the objections. This opinion is set forth on pages 7-9 of Sutherland's petition.

## REASONS FOR DENYING THE WRIT

### I. The Petition Does Not Satisfy the Requirements of Rule 19 of the Rules of the Supreme Court of the United States

It is beyond question that the petition does not meet the considerations of Rule 19 of the Rules of the Supreme Court of the United States. Sutherland agrees that this is so. Petition at 6. Not only does the case lack the specific grounds for review mentioned in the rule, there are clearly no "special and important reasons" of any kind which would justify invoking the certiorari jurisdiction.

The basis urged for granting the writ is to instruct "the lower court to hold the hearing originally requested by Petitioner and to make a proper record". Petition at 6. The reason advanced for the need for a hearing is to protect the integrity of judicial sales to ensure that the bankrupt estate realizes the maximum from the sale of its assets. Petition at 4, 5. While the Trustees believe that this objective is sound, they are unable to understand in what respect the procedure followed by the Reorganization Court resulted in the impairment of the integrity of judicial sales or how the Penn Central estate was prejudiced by the approval of a higher bid than Sutherland had made for the property.

### II. Whether an Oral Hearing Should Be Held on a Petition for Approval of the Sale of Assets Rests Within the Discretion of the Reorganization Court

The proceedings under Section 77(o) of the Bankruptcy Act, 11 U.S.C. § 205(o), are in equity and summary in nature. There is no requirement in Section 77(o) that petitions to the Reorganization Court for approval of the sale of property be considered after an oral hearing.

Whether an oral hearing should be held is a matter left to the discretion of the Reorganization Court. See *Continental Bank v. Rock Island Ry.*, 294 U.S. 648, 682 (1935); *DeMet v. Harralson*, 399 F.2d 35, 39 (5th Cir. 1968); See also *Sigma Chi Fraternity v. Regents of the University of Colorado*, 258 F. Supp. 515, 526-27 (D. Colo. 1966). Cf. Rules of Bankruptcy Procedure, R. 8-510(a)(b). "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

Disposing of petitions for approval of the sale of assets without an oral hearing is appropriate in large reorganizations and particularly so in the case of the Penn Central reorganization, certainly one of the largest, if not the largest, in the history of reorganizations under the Bankruptcy Act, 11 U.S.C. §§ 1-775. Over the period of eight years in which Penn Central has been in reorganization, the Reorganization Court has been required to consider several hundred petitions for the approval of the sale of assets and a very large number of other petitions for approval of the establishment of proofs of claim procedure, approval of compensation to consultants and attorneys, and for a host of other activities growing out of the functioning of the Penn Central estate. In addition to the very large volume of petitions requiring judicial consideration and approval, the Court has been required to rule upon novel legal questions of the greatest importance, including the Trustees' Plan of Reorganization.<sup>2</sup> To enable the Court to handle this enormous work load superimposed upon its regular duties, there has been developed a no-oral-hearing procedure which permits the Court to decide many

2. See, e.g., *Connecticut Gen. Ins. Corp. v. United States Ry. Ass'n.*, 383 F. Supp. 510 (E.D. Pa.) (concurring opinion) (constitutionality of Regional Rail Reorganization Act of 1973), *rev'd sub nom.* *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974).

matters upon petitions, affidavits, proposed forms of orders and responses thereto.

This procedure gives the objectors the right to ask for an oral hearing, however, and to present reasons why such a hearing should be held. If the Reorganization Court determines that an insufficient basis for an oral hearing has been presented, the decision is made upon the written submissions. Where the Court decides that an oral hearing is warranted, it is held, but in such instances the regular course has been to require the testimony to be submitted in the form of affidavits subject to cross-examination. This procedure parallels that used by the administrative agencies and is both expeditious and relatively inexpensive. It has been used for the majority of the petitions for approval of the sale of assets, where the issue is generally a narrow one—whether the price offered is in the best interests of the estate—and where the proceeding is essentially administrative in nature. In no instance has the United States Court of Appeals for the Third Circuit or this Court held that this procedure is inadequate to satisfy the requirements of procedural due process of law.

To grant Sutherland's request that the case be remanded to the Reorganization Court for an oral hearing, this Court would have to find either that the sealed bid procedure denies fundamental fairness or that the present application of that procedure violated due process. In the earlier opinion, set out in full in the petition at 7-9, the Reorganization Court, after oral hearing, determined that the sealed bid procedure was proper even if the amount of the original offer became known to other bidders.<sup>3</sup> In this case, Sutherland has not asserted any relevant material facts which are disputed and which require an oral hearing to determine.

3. This ruling seems clearly correct since such a disclosure would amount to no more than the Trustees' establishing an upset price before the bidding began.

A requirement that the Reorganization Court hold an oral hearing upon the request of a low bidder for property being sold would be totally unmindful of judicial economy and in many instances would result in delays which could frustrate a sale to the higher bidder to the disadvantage of the estate.

### III. The Terms of Sutherland's Offer Permitted the Trustees to Accept Other Offers

From the provisions of Section 8.2 of the form of agreement signed by Sutherland, it is clear that the terms of Sutherland's offer did not bind the Trustees to accept that offer (regardless of the fact that it was substantially more than the appraised value of the property) but permitted the Trustees to seek other offers and to accept the highest offer received. The offer was made irrevocable for 120 days to enable the Trustees to evaluate the offer in light of all relevant circumstances and to seek firm offers from others who had expressed an interest in the property.<sup>4</sup>

The distinction between this case and those cited by Sutherland is that the cited cases involved offers which the trustee had accepted and submitted to the court for confirmation. In those cases it was held that the court abused its discretion in approving a later—though slightly higher—offer than the one accepted by the trustee. Here, Sutherland's offer was never accepted by the Trustees or submitted to the Court. Where a bid has not been accepted, the bidder cannot be heard to complain that the sale was subsequently abandoned, *Blossom v. Railroad Co.*, 70 U.S. 196 (1865), or that a resale was ordered with an oppor-

4. In the parlance of the securities markets, the Trustees bought a "put" on the property exercisable within 120 days; in other words, the Trustees at any time within 120 days could require Sutherland to buy the property for \$454,000. They were not, however, bound to sell the property to Sutherland for that price—or any price.

tunity for the original bidder or bidders to participate. *J. J. Sugarman Co. v. Davis*, 203 F.2d 931 (10th Cir. 1953).

### IV. The Trustees Were Under a Duty to Accept the Best Offer Attainable for Submission to the Court

It is not possible to read *In re Stanley Engineering Corp.*, 164 F.2d 316 (3d Cir. 1947), *cert. denied*, 332 U.S. 847 (1948), or any of the other cases cited by Sutherland as condemning the Trustees' action in eliciting bids from would-be purchasers, because one of them had made a formal offer for the property. Indeed, far from diminishing confidence in judicial sales and reducing the amounts to be received therefrom, such competition tends to develop the highest attainable values for the debtor's assets. In *Stanley Engineering* there was spirited competitive bidding. In *Smith v. Save-Rite Drug Stores*, 178 F.2d 507 (10th Cir. 1949), the sealed bid procedure was utilized and seven bids were received. In *re Marathon Foundry & Machine Co.*, 239 F.2d 122 (7th Cir. 1956), *cert. denied*, 353 U.S. 912 (1957), involved the sale of the debtor's stock ownership in another corporation. The sale attracted several bids, the highest of which was submitted to the court and ultimately confirmed.

Sutherland's purported concern for the welfare of the Penn Central estate because of the alleged unfairness of asking for sealed bids in this case is unfounded. Bidders at judicial sales and offerors at private sales acquire no rights—and here Sutherland had no reason to suppose that it acquired any rights (see Section 8.2)—until their bid or offer has been accepted.<sup>5</sup>

5. In connection with the effect of the sealed bid procedure upon the estate, it should be noted that the Penn Central reorganization is rapidly drawing to a close; the Court has fixed October 24, 1978, as the date for consummation of the reorganization. In *re Penn Central Transp. Co.*, No. 70-347, Consummation Order and Final Decree at 9 (E.D. Pa. Aug. 17, 1978).



In affirming the Reorganization Court's approval of the sale to Yacht Club-Kister, the Third Circuit has not departed from the principles laid down in *Stanley Engineering*, which holds it to be an abuse of discretion for a court to fail to confirm a sale to the high bidder at a judicial sale for the reason that a somewhat higher bid is made at the confirmation hearing. Here, the Reorganization Court did confirm a sale to the high bidder at a judicial sale conducted under a sealed bid procedure, and the Third Circuit properly affirmed that action. It would be a clear abuse of discretion for the trustee to accept, and the court to approve, the lesser of two such bids. *Kimmel v. Crocker*, 72 F.2d 599 (10th Cir. 1934).

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

MARK WILLCOX, JR.  
HERBERT G. SCHICK  
HEPBURN, ROSS, WILLCOX  
& PUTNAM  
2010 Two Penn Center  
Plaza  
Philadelphia, Pa. 19102  
*Attorneys for Trustee of  
The Pittsburgh, Youngs-  
town & Ashtabula Railway  
Company, Secondary  
Debtor*

CARL HELMETAG, JR.  
EUGENE E. ANDERSON, JR.  
3100 IVB Building  
1700 Market Street  
Philadelphia, Pa. 19103  
*Attorneys for Trustees of  
Penn Central Transportation  
Company, Debtor*

Dated: September 13, 1978

### CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Brief for Respondents in Opposition, Trustees of the property of Penn Central Transportation Company, Debtor, and Trustee of the property of The Pittsburgh, Youngstown & Ashtabula Railway Company, Secondary Debtor, to be mailed, by first class mail, postage prepaid, to the following:

JOSEPH S. GILL, Esq.  
100 East Broad Street  
Columbus, Ohio 43215

Dated at Philadelphia, Pennsylvania, this 13th day of September, 1978.

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CARL HELMETAG, JR.